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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 21.8.2007.

Smt. Jasbir Kaur and another .... Petitioners.

vs

Shri Vipan Sodhi and another .... Respondents.

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.H.S.Thiara,Advocate,for the petitioners.

Judgment

R.S.Madan, J.

This revision is directed against the order dated 21.7.2007 (Annexure P1) vide which the application of the petitioners (tenants) for amendment of the written statement was dismissed by the learned Rent Controller, Amritsar.

In brief the facts of the case are that the landlord have filed a suit for ejectment of the petitioners- herein (tenants) from the shop in question, on the ground that they are running office on the first floor of the demised premises and due to their ill health, it is difficult for them to go upstairs and they want to shift their office on the ground floor.

By filing the application, the petitioners alleged that the landlord wanted to get the demised shop evicted without disclosing the facts that any other alternative accommodation is available to them or not in the building in dispute or elsewhere. They have sufficient space on the ground floor of the building in dispute adjacent to the demised shop measuring 150 square feet. They have also submitted in the application that despite due diligence this was not pleaded while filing the written statement and now

they want to plead the abovesaid facts in the written statement by adding the following lines at the end of sub-para (iii) of para no.10 of written statement that, "*further more the applicants are also in the possession of sufficient alternative accommodation on the ground floor of the building in dispute itself*". They have also pleaded that the aforesaid amendment is necessary for the purpose of determining the real controversy between the parties.

The said application was contested by the landlord by filing written reply, wherein it was pleaded that the same is not maintainable and was filed only to delay the proceedings. The petitioners (tenants) are harassing them by moving the frivolous applications one after the other.

After hearing the learned counsel for the parties, the learned Rent Controller dismissed the application.

Heard.

It is contended on behalf of the petitioners that the proposed amendment is necessary for the purpose of determining the real controversy between the parties and is not going to substitute a new cause of action. He further contended that the landlords have sufficient accommodation on the ground floor adjacent to the shop in question and alleged that the landlord wanted to get the demised shop evicted. He submitted that inadvertently the said plea was not taken in the written statement which the petitioners (tenants) now wanted to take by way of amendment in the written statement. Learned counsel contended that the Rent Controller has dismissed the application of the tenants- petitioners on the ground that the case is at the stage of arguments, therefore, the application for amendment of the written statement is an abuse of the process of the court. In support of his

contention he relied upon 2003 (4) Recent Civil Reports 279 *Ujjar Singh and others vs Mann Singh and others,* wherein this court has observed that, "*mere delay in filing application for amendment cannot be taken against defendants to decline prayer- Amendment allowed".* Reference was also made to 2006 (2) Recent Civil Reports 577 *Rajesh Kumar Aggarwal and others vs K.K.Modi and others*, wherein the Apex Court has observed that, "*Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court."* It has further observed that, "*It should liberally allow all bona fide amendments necessary for determining the real question in controversy between the parties. First part of Rule 17 gives discretion to the court but second part is imperative and enjoins the court to allow all necessary amendments.*

The observations made in both the authorities are not disputed but the same are not applicable to the facts and circumstances of the present case. The tenants are contesting the petition for the last five years. The issues were framed on 20.11.2002. The landlords concluded his evidence. The tenants have been granted numerous opportunities and thereafter their evidence was closed. Now the case is for rebuttal evidence and arguments. The tenants by the proposed amendment wants to prolong the litigation. It is held in the number of authorities that the landlord is the judge of his bonafide needs and requirements. The landlords have sought the ejectment on the ground of ill health as it is difficult for them to go upstairs and they want to shift their office on the ground floor.

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The proposed amendment is an abuse of process of law, therefore, this revision is dismissed, in limine.

21.8.2007. (R.S.Madan)
vs. Judge.